

Regular Meeting

Agenda Item #	4
Meeting Date	November 22, 2004
Prepared By	Susan Silber City Attorney
Approved By	Barbara B. Matthews City Manager

Discussion Item	Approving a settlement with James F. Knott Construction Co., LLC of pending Community Center construction contract claims.
Background	James F. Knott Construction Co., LLC (“Knott”), the City’s community center construction contractor, has asserted claims for delay, materials escalation, and profit and markup on claims and change orders totaling \$471,143. The City’s project management team has succeeded in negotiating a settlement of these claims in the amount of \$230,000.00, along with a release of claims through November 10, 2004, and indemnification against subcontractor/supplier delay and material escalation claims (with minor specified exceptions) through project completion. The proposed settlement extends the contract completion date to April 1, 2005, which is subject to change due to mitigating circumstances upon agreement by the appropriate parties. The proposed settlement also resolves matters such as the allowable markup on future change orders and the method of determining any future cold weather claims. The terms of the proposed settlement are set forth in the attached Resolution. If approved by the Council, these settlement terms will be embodied in a Change Order to the contract which will be signed by the City Manager.
Policy	The proposed settlement resolves disputed claims for less than one-half of the claim amount and will allow the City to more accurately determine the costs related to the Community Center construction project.
Fiscal Impact	This settlement of claims will cost the City \$230,000.00.
Attachments	Proposed Resolution approving the interim claims settlement with Knott and authorizing the City to sign a Change Order containing these settlement terms on behalf of the City.
Recommendation	Approve the proposed settlement and the attached Resolution.
Special Consideration	This is NOT a final settlement.

Introduced by:

Resolution Date:

RESOLUTION NO. 2004-__

**(Approving Interim Settlement with James F. Knott Construction Co., LLC
of Community Center Construction Contract Claims)**

WHEREAS, James F. Knott Construction Co., LLC (“Knott”) has a contract with the City for construction of the Takoma Park Community Center; and

WHEREAS, Knott has asserted claims against the City for additional contract compensation for delay and time impact, including material escalation, and for additional profit and overhead on its claim and on certain change orders of \$471,143.00; and

WHEREAS, the City’s project management team has negotiated a settlement of these claims with Knott; and

WHEREAS, the terms of the proposed settlement provide for the City to pay \$230,000.00 to Knott as additional contract compensation and to extend the current contract completion date to April 1, 2005; and

WHEREAS, in consideration of the City’s payment, Knott will waive and release all claims for delay and time impact, including material escalation, through November 10, 2004 (except for pending change order 1058), and indemnify and hold the City harmless against subcontractor or supplier claims for delay, time impact or material escalation damages or costs arising out of or relating to the Community Center project, except for the securing and installation of permanent power, the 3rd floor building permit, and the library connector; and

WHEREAS, the City also will waive the first 30 days of liquidated damages if the completion is delayed past the contract completion date; and

WHEREAS, as part of the proposed settlement Knott will waive its \$29,790.00 claim for change order markup on non-self performed work and, for any future extra work included in a change order to the contract, will agree to a markup of 15% for its fee (including general and administrative expenses) on material provided or work performed by Knott and a markup of 8% for its fee (including general and administrative expenses) on material provided or work performed by subcontractors or suppliers; and

WHEREAS, Knott further will agree that no additional contract time for cold or winter weather will be claimed, whether incurred to date or incurred in the future on the Community Center project, and that Knott will be paid for its additional costs, priced on a time and material basis, for cold and winter weather conditions after November 10, 2004 up to project completion in accordance with ACI guidelines; and

WHEREAS, pursuant to the proposed settlement, Knott may bill up to \$115,000.00 as

part of its next pay application and the remaining balance will be divided into equal shares with a share billed in successive pay applications until the full \$230,000.00 settlement amount is paid.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT the proposed interim claims settlement with James F. Knott Construction Co., LLC, as set forth in this Resolution, is approved and the City Manager is authorized to execute a Change Order containing these settlement terms on behalf of the City of Takoma Park.

THIS RESOLUTION IS ADOPTED THIS _____ DAY OF _____, 2004.

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